

No. 9204

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit 10

COUNTY OF FRESNO and WALTER S. HENDERSON,
JR., Assessor of the County of Fresno, State
of California,

Appellants,

vs.

COMMODITY CREDIT CORPORATION,

Appellee.

Upon Appeal from the District Court of the United States for the
Southern District of California, Northern Division.

APPELLANTS' SUPPLEMENTAL BRIEF.

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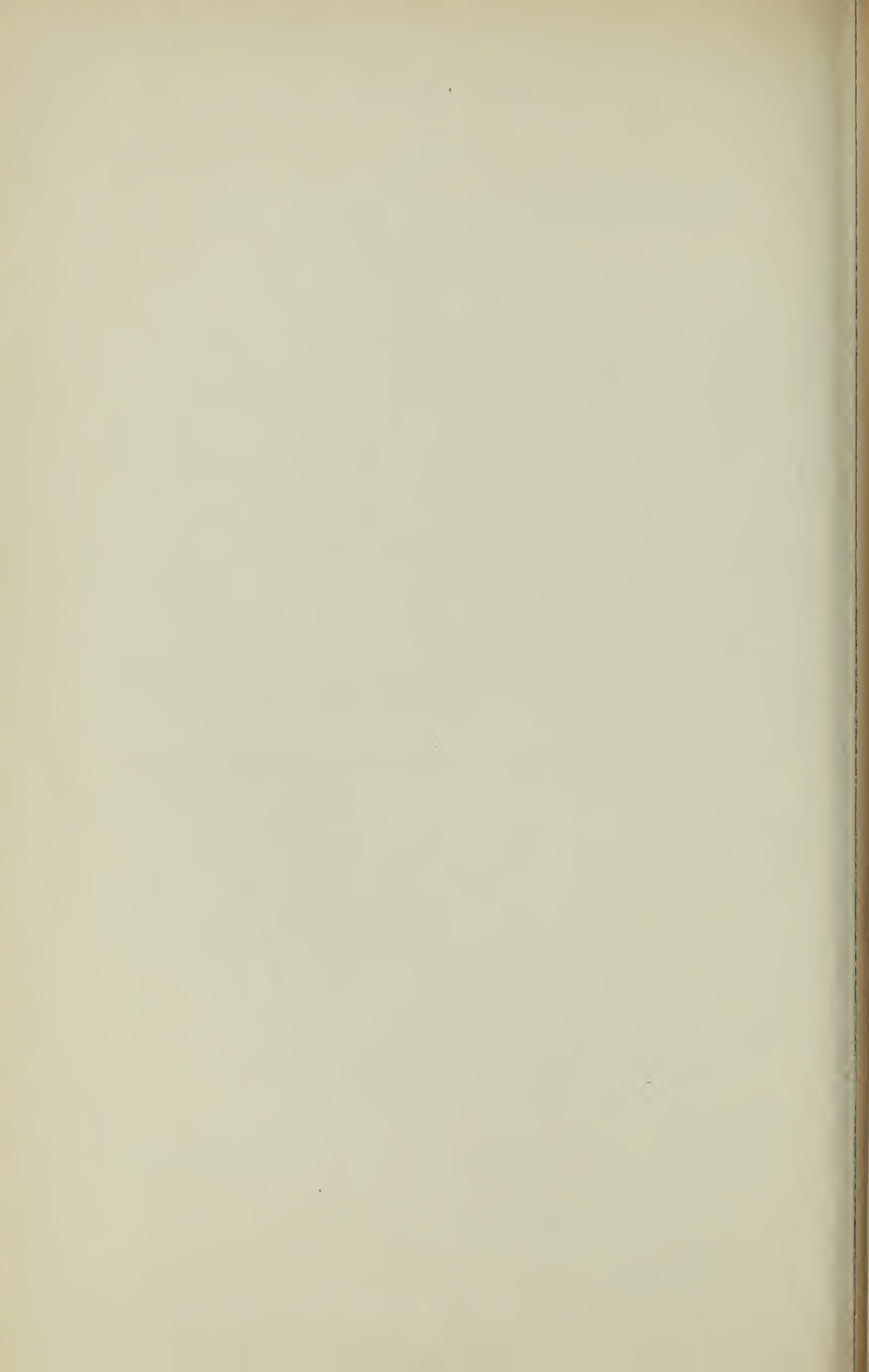
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CLERK



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APPELLANTS' SUPPLEMENTAL BRIEF.

I. FOREWORD.

On February 14, 1940, and during the course of argument of the above entitled matter, the Court requested counsel for the above named parties to file a supplemental brief herein on the following points, to-wit:

(1)—Whether, under the pertinent statutes of the State of California, County personal property taxes would be entitled to priority in payment, where the County Assessor had seized the property assessed, over a private lien holder *prior in time*;

for example, a pledgee or chattel mortgagee whose lien was effective prior to the time that the personal property tax was assessed and personal property was seized or distrained to effect collection thereof;

(2)—Whether the answer to question 1 was equally applicable in the case where the prior-in-time lien holder was the Commodity Credit Corporation.

We will present herein for the Court's consideration our contention that the personal property tax, under the above described circumstances, is entitled to priority of payment over a private lien holder who acquired his lien prior to the time the tax was assessed and the property distrained to effect collection thereof; and our further contention that the same rule is applicable in the case where, as herein, the lien holder is a federal instrumentality.

II. PERTINENT STATUTES AND CONSTITUTIONAL PROVISIONS OF THE STATE OF CALIFORNIA RELATING TO THE ASSESSMENT AND COLLECTION OF PERSONAL PROPERTY TAXES.

Section 1 of Article XIII of the Constitution of the State of California provides, in part, as follows:

“All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. * * *

and further provided, that property * * * such as may belong to the United States * * * shall be exempt from taxation * * *." (Amendment adopted November 3, 1914.)

Section 8 of Article XIII of said Constitution provides as follows:

"The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March." (Original section, Constitution of 1879.)

Section 9a of said Constitution provides:

"The taxes levied for any current tax year upon personal property and assessments upon possession of, claim to, or right to the possession of land and upon taxable improvements located on land exempt from taxation, which are not a lien upon land sufficient in value to secure their payment, shall be based upon the rates for taxes levied for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure the payment thereof. Nothing in this section shall be construed to prohibit the equalization each year of the assessment on such property in the manner now or hereafter provided by law." (Amendment adopted November 3, 1936.)

(NOTE: Many of the sections of the Political Code hereinafter referred to were amended in 1929. However, we here quote such sections as

they read at the time the taxes here in question were assessed.)

Section 3627 of the Political Code of the State of California provides:

“All taxable property must be assessed at its full cash value, except that all notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages, and any legal or equitable interest therein of the classes taxable under the provisions of section 16 of article thirteen of the constitution of this state, shall be assessed at their actual value as the same is defined in section 3617 of this code. In determining the actual value of shares of capital stock there shall be deducted the actual value of property located in or having its situs in this state of the corporation by which such shares of capital stock are issued. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land of the same quality and similarly situated shall be assessed at the same value.” (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3628 of said Code provides:

“Except as otherwise provided in the constitution of this state, all taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels, or subdivisions, not exceeding six hundred forty acres each and tracts of land containing more than six hundred forty acres which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Land sold by the state

for which no patent has been issued, shall be assessed the same as other land, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid, nor shall anything herein release any person, firm, corporation or association from their duty to file the statement required by law. In assessing notes and solvent credits and equitable or legal interests therein, not secured by mortgage, deed of trust, contract or other obligation, where land situated within this state is pledged as security therefor, a deduction from the assessed value shall be made of such debts including notes, unsecured by mortgage, deed of trust, contract or other obligation where land situated within this state is pledged as security therefor, as may be owing by such person, firm, corporation or association to bona fide residents of this state." (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3629 of said Code provides, in part, as follows:

“The assessor must exact from each person a statement, under oath, setting forth specifically all the real and personal property not exempt from taxation owned by such person, or in his possession, or under his control, at twelve o’clock meridian on the first Monday in March, and it is hereby required that such person shall file such statement with the assessor between the first Mondays in March and July of each year and at any time during, before or after such dates furnish such information or records for examination as may be required by the assessor to make a proper assessment; provided, however, that no assessment shall hereafter be rendered invalid by reason of the failure of the assessor to demand or secure the statement required by this section prior to the making thereof. Such statement shall be in writing, showing separately:

“1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

“2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

“3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.”

Section 3636 of said Code provides:

“If the name of the absent owner is known to the assessor; or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name. If unknown to the assessor, and if it does

not appear of record as aforesaid, the property must be assessed to unknown owners." (Statutes 1891, p. 107; in effect March 14, 1891.)

Section 3650 of said Code provided, in part, as follows:

"The assessor must prepare an assessment book, with appropriate headings, as directed by the state board of equalization, in which must be listed all property within the county, and which shall show under the appropriate heads:

"4. All personal property, showing the number, kind, amount and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment."

Section 3716 of said Code provided, in part, as follows:

"Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof provided, that the lien of every tax whether now existing or hereafter attaching shall cease to exist for all purposes after thirty years from the time said tax became a lien;"

Section 3717 of said Code provides, in part, as follows:

"Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first

Monday in March in each year.” (Amendments to Codes 1880, p. 16; in effect March 22, 1880.)

Section 3820 of said Code provides, in part, as follows:

“The Assessor shall have power to collect the taxes on all property when, in his opinion, said taxes are not a lien upon real property sufficient to secure payment of the taxes. * * *”

Statutes of California of 1903, page 130, as amended by Statutes 1921, page 352, provides:

“Section 1. Each county and city and county, may sue in its own name for the recovery of any and all moneys due or hereafter to become due as delinquent taxes or assessments upon any and all personal property, where no real property is assessed as security for the payment of such personal property taxes, or where in the judgment of the board of supervisors, there is not sufficient real property to secure the payment of such personal property taxes, whether the same be for county or city and county, and state purposes, or either of them, and for all penalties and interest charges due upon said taxes for non-payment thereof.

“Sec. 2. Suit may be brought in like manner for the recovery of any and all county or city and county, or state moneys due or hereafter to become due as delinquent taxes or assessments upon any and all improvements when situated upon leased land when said land is exempt from taxation.

“Sec. 3. On the trial of any such suit the assessment roll of said county or city and county,

or a copy of any entry therein duly certified, showing unpaid taxes or assessments against the defendant or his property, or, in cases where the defendant is sued in a representative capacity, against any person or estate or the property thereof which he represents, shall be prima facie evidence of the plaintiff's right to recover.

“Sec. 4. All actions now pending for the collection of such taxes may be carried on and prosecuted under the provisions and in accordance with this act.

“Sec. 5. All acts and parts of acts in conflict with this act are hereby repealed, but the method of collecting such taxes herein provided shall not be deemed to be the exclusive method, nor shall the provisions of this act in any manner abrogate or modify the provisions of sections three thousand eight hundred thirty-one or three thousand eight hundred ninety-nine of the Political Code of the State of California.” (Statutes 1921, p. 352; in effect July 29, 1921.)

Section 3821 of said Code provided:

“In the case provided for in the preceding section, at the time of making the assessment, or at any time before noon of the first Monday in March following the assessment, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed, or if no personal property can be found, then the assessor may collect the taxes by seizure and sale of the possession of, claim to or right to the possession of the land. The assessor must keep a record of the property so seized and sold.” (Statutes 1937, p. 2369; in effect August 27, 1937.)

III. NATURE OF PERSONAL PROPERTY TAX PROCEEDINGS IN THE STATE OF CALIFORNIA.

While the State of California has the right to levy *ad valorem* taxes on property situated within its territorial jurisdiction, nevertheless, the State is not at the present time exercising that right and the expenses of operating the state government are generally supplied by indirect excise taxes. The taxation of property, according to its value, is left to the various subdivisions of the State, such as counties, cities etc.

In order that the Court may have a rather complete picture of the taxing processes of the counties throughout the State of California we believe that a brief summary of the above quoted constitutional and statutory provisions is desirable.

All personal property, save such as may *belong to* the United States (and other exemptions not material herein), must be assessed to and in the name of the person who owns or who has possession thereof (see section 1 of Article XIII; sections 3628 and 3636, Pol. Code, *supra*). In order to determine whether any particular piece of personal property is subject to assessment during any particular year it is necessary to determine its status as of the first Monday in March immediately preceding the fiscal year for which the assessment is levied (see section 8 of Article XIII and section 3628, *supra*, and *Dodge v. Nevada National Bank*, 109 Fed. Rep. 726, 731, 732, and *East Bay Municipal District v. Garrison*, 191 Cal. 680, 690, 218 Pac. 43, referred to at pages 46 and 47 of appellant's opening brief herein).

The assessment is made between the first Monday in March and the first Monday in July in any particular year (see section 3628, *supra*). This assessment is levied upon the full assessable value of the property in question (section 3627, *supra*). In order to facilitate the assessment of property the owners thereof or the person in possession is required to file with the Assessor a statement of all the property owned by him or in his possession (section 3629, *supra*). The Assessor is required to enter his assessment upon "an assessment roll" showing the personal property owned or in possession separately from the real property (section 3650, *supra*).

If, in the Assessor's *discretion or opinion* the person assessed does not have sufficient real property to secure the payment of the personal property tax levied the Assessor is authorized to proceed to collect the same (section 3820, *supra*).

The County is given its choice of several remedies to effect this collection. It may, on the one hand, bring a personal action against the person assessed, pursuant to the provisions of the statutes of 1903, page 130, *supra*, or it may, on the other hand, have the Assessor proceed to seize or distrain and sell the property pursuant to the provisions of section 3821, *supra*.

Section 3821 authorizes the Assessor to seize *any* personal property owned by the person against whom the assessment is levied.

The taxes levied against personal property are a lien on any real property owned by the person

against whom the personal property taxes were levied (see section 3717, *supra*).

There is no statutory provision specifically providing for a lien on the personal property assessed or on any other personal property owned by the person against whom the levy was made. However, as we will hereinafter show, it is our contention that when the property is seized or distrained, pursuant to section 3821, *supra*, a lien for the personal property taxes arises as of that time.

Section 3716 of the Political Code, *supra*, does, in our estimation, provide for a priority for real and personal property taxes levied by the county officials.

IV. ARGUMENT.

A. WHEN THE COUNTY ASSESSOR HAS SEIZED OR DISTRAINED PERSONAL PROPERTY, TO EFFECT COLLECTION OF A TAX PREVIOUSLY LEVIED, THE COUNTY IS ENTITLED TO PRIORITY IN PAYMENT EVEN THOUGH THERE IS A PREEXISTING LIEN ON THE PROPERTY SEIZED WHICH IS HELD BY A PRIVATE INDIVIDUAL.

(I) A tax is inherently entitled to priority in payment over pre-existing private lien holders.

It is our first contention herein that a tax "ex proprio vigore" is entitled to priority in payment over any pre-existing private lien holder on any particular property in question.

Our contention herein is not predicated upon the existence of any lien in favor of the government, but is predicated upon the oft expressed statements that a government must collect its taxes in order to func-

tion as such. It is true that there is some divergence of opinion on this question, but, nevertheless, the rule in California is that a tax obligation of the State of California or any of its political subdivisions is entitled to priority in payment regardless of whether it has been given any such preference by statute. The California Courts have adopted "the superior dignity" principle which is that because of the importance of the functions of government and the necessity of raising promptly the revenues necessary to carry out such functions, the obligation to pay taxes is necessarily of much greater dignity and on a much higher plane than ordinary obligations whether secured or unsecured, and therefore must be accorded some inherent priority over ordinary obligations, whether secured or unsecured, and whether such ordinary obligations existed before or after the tax obligation arose.

This rule was clearly expressed in the following California cases:

California Loan and Trust Co. v. Weis, 118 Cal. 489, 50 Pac. 697;

O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022;

Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424;

San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670.

We submit that these cases definitely establish the principle that in the State of California, the "superior dignity" principle has been adopted regardless

of whether a statute provides that the tax is a lien and regardless of whether a statute provides that that lien shall be entitled to priority over ordinary liens, and that therefore a tax levied on personal property by a county in the State of California is inherently entitled to priority in payment over pre-existing private liens. That where the Assessor of a particular county has seized the particular personal property assessed or any other personal property belonging to the person against whom the assessment was made, he may proceed to sell the property so seized in order to effect collection of the tax, regardless of whether there is a pre-existing lien thereon, and may convey a title to the purchaser at a tax sale, free and clear of any such pre-existing private lien.

(II) Section 3716 of the Political Code expressly provides that a tax of a political subdivision of the State of California is entitled to priority in payment over a pre-existing private lien holder.

It is our second contention herein that if we assume, *arguendo*, that the "superior dignity" principle has not been adopted by the California Courts, nevertheless, section 3716 of the Political Code establishes priority for a tax levied by a political subdivision of the State, regardless of whether that tax is secured by a lien.

In *California Loan & Trust Co. v. Weis*, *supra*, the Supreme Court definitely established that the language contained in section 3716, *supra*, was sufficient to create a statutory priority in favor of taxes levied on *real property* over a pre-existing mortgage held by a private individual.

The *ratio decidendi* of the *California Loan and Trust Company* case equally supports our position herein to the effect that section 3716 establishes a statutory priority in favor of a *personal property* tax levied by the appellants herein, even though they may not have a lien on the personal property which has been seized or distrained by the Assessor pursuant to section 3821.

We have been unable to find any case decided by any Court in the State of California wherein this specific issue was decided. However, we believe that the reasoning underlying the cases which we have cited in Argument A (I), supra, fully supports our contention herein.

We believe that the following language of section 3716 creates a statutory preference in favor of personal property taxes, even though it be held that there is no lien therefor:

“Every tax has the effect of a judgment against the person, * * * the judgment is not satisfied * * * until the taxes are paid or the property sold for the payment thereof * * *”

We believe that this language is just as effective to create the priority which we claim exists in the case of personal property taxes as the following language contained in section 3716, supra, is effective to create the priority in favor of real property taxes:

“* * * and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; * * * nor the lien removed until the taxes are paid or the property sold for the payment thereof; * * *”

It is true that some jurisdictions hold there is no lien for any tax nor is there any priority for any tax secured by a lien unless there is specific statutory authorization for the same. However, we believe that is not the rule in the State of California, as we have attempted to show in our argument A (I), *supra*; further we have shown herein that even if statutory authorization for such priority is necessary, section 3716, *supra*, provides such authorization. We believe that it is fundamental that it is not necessary in those jurisdictions where statutory authorization is necessary for the creation of a lien or priority therefor, to provide for a statutory lien in order to give preference to the tax.

This being true we submit that section 3716 fully establishes priority for personal property taxes levied by appellants herein on the property *which has been distrained by the Assessor* even though there exists thereon a private lien which arose and accrued and attached prior to the time the tax was levied or the distraint was made.

(III) Where a County Assessor has seized or distrained property the County acquires a lien which is entitled to priority under Section 3716 of the Political Code of the State of California.

It is our third contention that even if we assume, *arguendo*, that a tax is not inherently entitled to priority in the State of California and, further, if we assume that a statutory preference cannot arise unless the statute creates a lien for the tax, it is true, nevertheless, that the pertinent California statutes do provide for the creation of a lien in favor of personal property taxes.

Section 3716 of the Political Code provides in part, as follows:

“Every tax has the effect of a judgment against the person, and every lien *created by this title* has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof * * *” (Emphasis added.)

The title referred to by section 3716 is Title IX of the Political Code; sections 3607 to 3900a, both inclusive, of the Political Code, are the sections contained within said Title IX. Included within said Title IX is, in particular, section 3821 of the Code which authorizes the Assessor to seize or distrain personal property whenever, in his opinion, there is not sufficient real property owned by the taxpayer to secure the payment of the personal property taxes levied.

It is our understanding that the effect of seizing or distraining personal property to effect collection of a tax is to create a lien in favor of the taxing agency which has made the seizure or distraint.

In other words, while it is true that there is no specific language in Title IX of the Political Code which specifically creates a lien on personal property, nevertheless, it is obvious that the effect of section 3821 of the Code, which authorizes the Assessor to seize or distrain personal property to effect collection of personal property taxes is to create a lien in favor of the taxing agency that makes such distraint, as of the date the seizure or distraint is made.

See:

Mohawk Oil Co. v. Hopkins, 196 Cal. 148, 153,
236 Pac. 133, 135;

Manzo v. Manzo, 133 Atl. 190, 192 (N. J.).

Once we establish that the effect of the seizure and distraint, pursuant to section 3821, is to create a lien on the personal property seized or distrained then we have established that we have a lien created by Title IX of the Political Code, within the purview of section 3716 of the Political Code. We then rely upon the cases cited in Argument A (I), supra, in support of our contention that the personal property tax is entitled to be paid prior to the time that a pre-existing private lien holder may be paid. We believe that the language that we have quoted above from section 3716 creates a priority in favor of taxes and does not have any other effect.

See

Lent v. Tillson, 72 Cal. 404, 14 Pac. 71, 140
U. S. 316.

B. THE PLEDGEE'S LIEN ACQUIRED BY THE COMMODITY CREDIT CORPORATION HEREIN IS IN NO BETTER POSITION THAN WOULD BE A LIEN ACQUIRED BY A PRIVATE INDIVIDUAL.

The Federal Courts sitting within the territorial jurisdiction of a particular state are bound by the statutory laws of that state and the judicial interpretations of those statutes by the Appellate Courts of that state except in so far as there is involved in any particular case a Congressional statute or a provision of the Federal Constitution.

Erie Rd. Co. v. Tompkins, 304 U. S. 64.

Therefore, unless the appellee can establish that there is some Congressional statute which gives the lien which it acquired by virtue of the pledge herein priority over any existing claim for personal property taxes levied by the appellants herein or unless they can establish that some constitutional provision would prevent the imposition of the tax herein it is our position that the appellee would be in no different position than would be a private lien holder.

In *City of New Brunswick v. United States*, 276 U. S. 547, the Court gave effect to a statutory preference of a vendor's lien involved therein which was retained by the United States Housing Authority. In other words in that case *there was a Congressional statute* which expressly provided that the interests of the United States in the lands in question should remain *a first lien on the lands involved therein*. Inasmuch as the Constitution and laws passed pursuant thereto are the supreme law of the land it naturally follows that the Court gave priority to the lien retained by the United States Government.

We also refer the Court to our comments on the inapplicability of the *New Brunswick* case to the instant matter, which we made on pages 28 to 30 of our reply brief herein.

The only other possible theory upon which appellee herein can claim priority over the claim of the appellants for their personal property taxes on the cotton in question must be that the Commodity Credit Corporation has some "property" in the cotton taxed herein. Rather than repeat our argument on this point we refer the Court to our argument thereon contained

in pages 45 to 62 of our opening brief herein, and on pages 23 to 28 of our reply brief herein.

We submit that we have established that there is no Congressional preference given to the pledgee's lien acquired by the appellee herein and further that the County may levy the tax in the first instance on this property because it is entirely owned by a private individual and the Commodity Credit Corporation has no "property" in the cotton. This being true we submit that the Commodity Credit Corporation is in the same position as would be a private lien holder and that the personal property taxes levied herein by appellants are entitled to priority in payment over any pre-existing lien interests which the appellee may have herein.

(Argument B, supra, is based on the assumption that the Commodity Credit Corporation was lawfully constituted. However, if the Court should be of the opinion that the Commodity Credit Corporation is entitled, as a matter of statutory interpretation, to priority in payment over the claims of the appellants herein then we submit that the Court must consider our argument that the Commodity Credit Corporation was originally unlawfully created and now is operating without authority of law. We refer the Court to our argument on that point contained in pages 19 to 28 of our opening brief herein and pages 10 to 22 of our reply brief herein and further to the oral argument which we presented on February 14, 1940. This is so, in our estimation, because it is our contention that if the Commodity Credit Corporation has no legal existence there is no lien on the property in question.)

CONCLUSION.

We submit that the claim of the appellants herein is entitled to priority in payment over the claim of the appellee because:

(1) Taxes are inherently entitled to priority;

(2) Section 3716 of the Political Code, *supra*, gives, even in the absence of a lien, priority to personal property taxes over pre-existing private liens;

(3) Section 3716, *supra*, when read in conjunction with section 3821, creates a lien, *upon distraint*, in favor of personal property taxes levied by the proper county officials within the State of California;

(4) Principles 1, 2 and 3 are equally applicable to the appellee herein.

Dated, Fresno, California,
February 28, 1940.

Respectfully submitted,

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